

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

ROSE HILLS MEMORIAL PARK

Employer

and

ARTHUR TURNER, JR., An Individual

Petitioner

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 813, AFL-CIO

Union

Case No. 34-RD-274

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Union contends that the petition should be dismissed because the Petitioner is a supervisor within the meaning of Section 2(11) of the Act. The record discloses that the Employer is engaged in the operation of a cemetery. The Petitioner is employed as the "working foreman", a position which was specifically included in the certified unit under the title "grounds foreman". The Petitioner has been included in the certified unit and represented by the Union since the certification, and has been specifically covered under the title "working foreman" by all terms and conditions of the current collective-bargaining agreement between the Employer and the Union. In addition to the Petitioner, there are seven other unit employees, including one mechanic, one backhoe operator, and five grounds employees.

The Petitioner spends approximately 70 per cent of his time performing the same duties as the other unit employees, including the preparation of gravesites and related grounds maintenance duties. The remainder of his time is spent generally overseeing the work of the other unit employees, including the assignment and re-assignment of employees to specific jobs and advising them when to take their lunch break. In performing this function, the Petitioner is guided by the daily funeral schedule, which is provided to him by the Employer's Superintendent, Trevor Lessenger, to whom he directly reports and who is present at the Employer's facility throughout the workday. He is also responsible for reviewing the maps of grave locations in order to insure that graves are dug in the proper location, as well as for the installation of bronze plaques at gravesites and inscriptions on mausoleums. The Petitioner also trains new employees and inspects their work.

The Petitioner's undisputed testimony establishes that he lacks the authority to hire, discipline, discharge, reward, or evaluate employees. In the event that a work-related incident occurs involving a unit employee, the Petitioner merely documents it and passes it on to Lessenger, who independently investigates the matter and decides how to proceed, with no further input from the Petitioner. The Petitioner does not schedule the hours of employees, and lacks the authority to independently assign overtime or grant time off. Although he substitutes for Lessenger one day per week as well as during Lessenger's five weeks of annual vacation, the Petitioner can always contact Lessenger by phone to deal with any situation which exceeds his normal

authority, or he can take such matters to the Employer's General Manager, Nancy Stellato, who is also present at the Employer's facility throughout the workday. There is no evidence that while substituting for Lessenger, the Petitioner possesses or exercises any of Lessenger's supervisory duties or responsibilities.

The Petitioner is hourly paid in accordance with the terms of the collective bargaining agreement, receives no benefits not enjoyed by the other unit employees, and punches a time clock as other unit employees. He utilizes a small office in the Employer's facility to process the paperwork related to his duties involving grave maps, bronze plaques and mausoleum inscriptions.

Based upon the foregoing and the record as a whole, I find that the Petitioner is not a supervisor within the meaning of the Act. More particularly, I note that he does not exercise independent judgment in assigning and directing the work of other employees, but rather serves as a conduit for orders and directions from higher management, and he otherwise lacks any of the statutory indicia of supervisory authority. *Institutional Food Services*, 258 NLRB 650, 651 (1981); *Victory Electric Cooperative Association, Inc.*, 230 NLRB 1201 (1977); *The Plimpton Press*, 140 NLRB 975, n.8 (1963). Accordingly, the Union's motion to dismiss the petition is hereby denied.

In light of the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field employees, including grounds maintenance employees, grounds foremen, mechanics, and backhoe workers employed by the Employer at its facility located at 101 Mills St., Putnam Valley, New York; but excluding all other employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit described above at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who

did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by International Brotherhood of Teamsters, Local 813, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before March 15, 2001. No extension of time to file the list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 22, 2001.

Dated at Hartford, Connecticut this 8<sup>th</sup> day of March, 2001.

/s/ Jonathan B. Kreisberg

Jonathan B. Kreisberg, Acting Regional Director  
National Labor Relations Board  
Region 34

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